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dinarily incident to employment, and by continuing in employment he assumes such risks as become known to him during course of employment, or which are open and obvious.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 693, 694.]

**5. Master and Servant (§ 210 (3)\*)—Injuries to Servant—Assumption of Risk—Unlighted Switch Target.**—A fireman, injured by running into unlighted switch target while attempting to get on slowly moving engine, does not assume risk of injury.

**6. Appeal and Error (§ 1064 (4)\*)—Harmless Error—Instructions—Modification.**—Modification of requested instruction that servant assumes risk of dangers “normally and necessarily” incident to occupation, by substituting “ordinarily” for quoted words, held not prejudicial, in view of the evidence.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 600.]

**7. Appeal and Error (§ 1170 (3)\*)—Reversal—Formal Error—Declaration Too Long.**—That declaration in action for injuries to servant is too long is not ground for reversal, in view of Code 1904, §§ 3246, 3272, relating to disregard of formal errors.

Sims, J., dissenting in part.

Error to Law and Chancery Court of City of Norfolk.

Action by one Whitehurst against the Norfolk & Western Railway Company. From a judgment for plaintiff, defendant brings error. Affirmed.

*Hughes, Little & Seawell*, of Norfolk, and *Theo. W. Reath*, of Philadelphia, Pa., for plaintiff in error.

*Daniel Coleman*, *B. D. Willis*, *O. L. Shackelford*, and *N. T. Green*, all of Norfolk, for defendant in error.

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RIXEY'S EX'RS *v.* COMMONWEALTH et al.

June 12, 1919.

[99 S. E. 573.]

**1. Taxation (§ 271\*)—Situs—Intangible Property of Decedent.**—Where executors are also, though not within Code 1904, § 492, trustees, and their accounts as executors have not been closed, the intangible property of the estate is taxable to the estate for state and local taxes at the last domicile of decedent.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 101.]

**2. Executors and Administrators (§ 81\*)—Executor's Duties under Will—Trust.**—Where the will directs the executor to invest funds belonging to the estate, no trust is superadded, but that is a part of his duties as executor.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 529.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

**3. Executors and Administrators (§ 45\*)—Executor Holding Property as Trustee.**—An executor also trustee by the will cannot be considered as holding any part of the assets in his capacity as trustee until he has closed his accounts as executor.

**4. Taxation (§ 260\*)—For Local Purposes—Intangible Property—Situs.**—If the proper situs for taxation of intangible personal property is in a certain district and county, it is liable for local as well as state taxation at this situs.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 101; 17 Va.-W. Va. Enc. Dig. 968.]

**5. Taxation (§ 271\*)—Intangible Personal Property—Decedent's Estate.**—The situs for taxation of intangible personal property is at the domicile of the owner, and in case of an undistributed estate held by the personal representatives, the property must be deemed to be the property of decedent until it has been distributed to those who succeed him in the beneficial ownership.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 101.]

**6. Taxation (§ 319 (2)\*)—Excessive Valuation—Burden of Proof.**—Plaintiffs, executors, have the burden of showing that valuations of intangible personal property of the estate upon which taxes complained of were assessed were excessive; the presumption being in favor of validity of assessments.

[Ed. Note.—For other cases, see 14 Va.-W. Va. Enc. Dig. 1002.]

**7. Statutes (§ 245\*)—Tax Laws—Liberal Construction.**—Tax statutes must be liberally construed to produce the best obtainable results.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 771.]

**8. Taxation (§ 79\*)—Ownership.**—The ownership of taxable property imposes the duty of paying taxes thereon.

**9. Taxation (§ 362\*)—Omitted Property—Retrospective Statute—Vested Rights.**—Code 1904, § 508, as amended by Acts 1916, c. 491, providing that no municipal, county, or district tax shall be levied or collected on any assessment of intangible personal property for taxes alleged to have been omitted from assessment for the years prior to 1912, is retrospective to the extent that it applies to assessment for the year 1911, though made before adoption of the act: the locality acquiring no vested right in omitted taxes even if assessed before enactment of 1916.

**10. Constitutional Law (§ 70 (1)\*)—Judicial Powers—Relief from Penalties for Nonpayment of Taxes.**—It is the duty of every taxpayer to report his property for assessment and to pay taxes thereon by December 1st, following in order to escape the penalties imposed

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

by Code 1904, § 603, and the Supreme Court has no power to relieve a taxpayer from such penalty.

Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 185.]

Appeal from Circuit Court, Culpeper County.

Petition by John F. Rixey's executors against the Commonwealth and the Board of Supervisors of Culpeper County, Va., for relief from assessments on intangible property of the estate for state and local taxes for certain years. From a denial of their petition, the executors appeal. Amended, affirmed, and remanded.

*John S. Barbour*, of Fairfax, and *J. G. Hiden*, of Culpeper, for appellants.

*John R. Saunders*, Atty. Gen., and *O. L. Shumake*, of Richmond, for appellees.

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LAVENSTEIN BROS. v. HARTFORD FIRE INS. CO.

June 12, 1919.

[99 S. E. 579.]

**1. Insurance (§ 665 (1)\*)—Fire Insurance—Inventory—Sufficiency of Evidence.**—In action on fire policy insuring stock of goods, evidence held to show that inventory taken February 1st did not include purchases by insured during preceding January.

**2. Insurance (§ 335 (2)\*)—Fire Insurance—Inventory—Sufficiency.**—The taking of an inventory on February 1st, without including purchases by insured during preceding January, was not a violation of fire policy requiring a complete itemized inventory of stock on hand, where the invoices of all such purchases were preserved in an invoice book, and were shown in detail as fully as would have been shown by inventory.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 85, 102.]

**3. Insurance (§ 335 (2)\*)—Fire Insurance—Inventory of Stock of Goods—"Complete Itemized Inventory."**—Fire policy, requiring insured to make "complete itemized inventory of stock on hand," did not require insured, in making inventory, to record the stock numbers of the items of goods or other data touching the identity of the items, in order that such goods could be traced to the former inventories, to invoices of them, or the like.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Inventory. For other cases, see 6 Va.-W. Va. Enc. Dig. 85, 102.]

**4. Insurance (§ 335 (2)\*)—Fire Insurance—Inventory—Stock of Goods.**—Under fire policy requiring insured to make a complete

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